

To: Tom Hagler/R9/USEPA/US@EPA[]
From: Dan Griffiths
Sent: Tue 10/23/2012 9:35:28 PM
Subject: Re: RPA / mitigation measures must be reasonably certain to occur
dgriffiths@ucdavis.edu
Hagler.Tom@epamail.epa.gov
http://www.harvardlawreview.org/media/pdf/vol125_national_wildlife_federation.pdf
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Hi Tom,

I've finally had some time to get around to this whole Delta decision tree issue. The decision tree idea in the context of the BDCP appears to have come from the consulting firm ICF international. Understandably, they are not particularly happy to talk to me, and I'm working on getting an authorization from the CA natural resources agency before I can get answers from some of them.

Of the few that I could elicit information from, it appears that the decision tree has been used in prior HCPs, and there is no indication that the process or its implementation will be any different than in prior HCPs (according to some). I've found reference to HCPs in prior hydroelectric dam projects, but no specific information about the decision tree program itself.

Do you (or your colleagues) know specific details about the use and implementation of prior decision trees? This would be very useful in my legal analysis to see if these decision trees have ever been specific or had the effect that they aim to achieve.

Best,
Dan Griffiths

On Sep 26, 2012, at 12:56 PM, Dan Griffiths <dgriffiths@ucdavis.edu> wrote:

Thanks Tom! This is a very helpful summary/perspective.

-Dan

On Sep 26, 2012, at 10:24 AM, Tom Hagler <Hagler.Tom@epamail.epa.gov> wrote:

See also this little gem (below). There is already an article out about it. That's at:

http://www.harvardlawreview.org/media/pdf/vol125_national_wildlife_federation.pdf

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----- Forwarded by Tom Hagler/R9/USEPA/US on 09/26/2012 10:21 AM -----

From: "Obegi, Doug" <dobegi@nrdc.org>

To: Tom Hagler/R9/USEPA/US@EPA

Date: 09/25/2012 04:36 PM

Subject: RPA / mitigation measures must be reasonably certain to occur

National Wildlife Federation v. National Marine Fisheries Service, 839 F.Supp.2d 1117, 1125-27 (D. Or., 2011).

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